

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

Before Sh. N. K. Saini, AM And Sh. SUDHANSHU SRIVASTAVA, JM

ITA No.377/DEL/2010 : Asstt. Year : 2001-02

Ashok Arora 76, Sukhdham Apartments Plot No. 1, Sector-9, New Delhi ADQPA7752E	Vs	ITO Ward-37(3) New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.770/DEL/2010 : Asstt. Year : 2001-02

ITO Ward-37(3), Room No. 408, N- Block Vikas Bhawan, I. P. Estate, New Delhi	Vs	Ashok Arora 76, Sukhdham Apartments Plot No. 1, Sector-9, New Delhi ADQPA7752E
(APPELLANT)		(RESPONDENT)

**Assessee by : Sh. V. K. Sabharwal, Adv
Revenue by : Sh. S. K. Jain, DR**

Date of Hearing : 03.11.2016	Date of Pronouncement : 4.11.2016
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ORDER

Per N. K. Saini, AM:

These cross appeals filed by the assessee and the Department are directed against the order dated 30/11/2009 of CIT(A)-XXVIII, New Delhi.

2. The grounds of appeals raised by the Department are as follows: (ITA No. 770/Del/2010)

- “1. Whether in the facts and circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs.4 lakhs while holding that the A.O had made addition of the amount actually paid as loan totaling to Rs.24 lacs.
2. Whether in the facts and circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs.5 lakhs on the ground that the assessee may possess such amount out of his opening capital balance without there being any evidence of possession of such capital balance.
3. The appellant craves to add, amend or modify the grounds of appeal at any time.”

3. First, we will deal with the assessee’s appeal in ITA No. 377/Del/2010 wherein 10 grounds have been raised. However, at the first instance, the only Ground No. 1 was argued which reads as under:-

- “1. That the orders passed by the Assessing Officer and upheld by the Ld.CIT(A) are wrong in facts and erroneous on the point of law, because of invoking provisions and assuming jurisdiction u/s 147 read with Section 151 of the Income Tax Act, 1961, as based upon mere surmises and guess work.”

4. During the course of hearing, the Ld. Counsel for the assessee at the very outset submitted that an identical issue having similar facts was a subject matter of the adjudication before this Bench of the Tribunal in ITA No. 1894/Del/2012 for the Assessment Year 2002-03 in assessee’s own case and the issue was decided in favour of the assessee vide order dated 18th May 2016. Copy of the said order was furnished.

5. In his rival submission, the Ld. DR although supported the orders of the authorities below but could not controvert the aforesaid contentions of the Ld. Counsel for the assessee.

6. We have considered the submission of both the parties and perused the material available on the record it is noticed that an identical issue having similar facts related to the re-opening u/s 147/148 of the Income-tax Act, 1961 was a subject matter of adjudication before this Bench of the Tribunal in ITA No. 1894/Del/2012 for the Assessment Year 2002-03 in assessee's own case wherein vide order dated 18th May 2016, the issue was decided in favour of the assessee and the relevant findings have been given at paras 8 to 10 which read as under:-

8. *"Hon'ble Supreme Court decided the identical issue as to the validity of the notice issued u/s 147 of the Act for reopening of the assessment in the case entitled Chhugamal Rajpal vs. S.P. Chaliha - (1971) 79 ITR 603 by returning the following findings:-*

"The Supreme Court was dealing with a case where the AO had received certain communications from the Commissioner of Income Tax showing that the alleged creditors of the Assessee were "name-lenders and the transactions are bogus." The AO came to the conclusion that there were reasons to believe that income of the Assessee had escaped assessment. The Supreme Court disagreed and observed that the AO "had not even come to a prima facie conclusion that the transactions to which he referred were not genuine transactions. He appeared to have had only a vague felling that they may be "bogus transactions." It was further explained by the Supreme Court that:

"Before issuing a notice under S. 148, the ITO must have either reasons to believe that by reason of the omission or failure on the part of the assessee to make a return under S. 139 for any assessment year to the ITO or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year or alternatively notwithstanding that there has been no omission or failure as mentioned above on the part of the assessee, the ITO has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year. Unless the requirements of cl. (a)

or cl. (b) of S. 147 are satisfied, the ITO has no jurisdiction to issue a notice under S. 148."

The Supreme Court concluded that it was not satisfied that the ITO had any material before him which could satisfy the requirements under Section 147 and therefore could not have issued notice under Section 148."

9. Similar issue has been decided by Hon'ble jurisdictional High Court in case of Pr. Commissioner of Income Tax-4 vs. G & G Pharma Limited in ITA 545/2015 order dated 08.10.2015 by relying upon the Hon'ble Supreme Court judgment cited as Chhugamal Rajpal vs. S.P. Chaliha (supra). The operative part of the judgment in case of G & G Pharma Limited (supra) is as under :

"12. In the present case, after setting out four entries, stated to have been received by the Assessee on a single date i.e. 10th February 2003, from four entities which were termed as accommodation entries, which information was given to him by the Directorate of Investigation, the AO stated: "I have also perused various materials and report from Investigation Wing and on that basis it is evident that the assessee company has introduced its own unaccounted money in its bank account by way of above accommodation entries." The above conclusion is unhelpful in understanding whether the AO applied his mind to the materials that he talks about particularly since he did not describe what those materials were. Once the date on which the so called accommodation entries were provided is known, it would not have been difficult for the AO, if he had in fact undertaken the exercise, to make a reference to the manner in which those very entries were provided in the accounts of the Assessee, which must have been tendered along with the return, which was filed on 14th November 2004 and was processed under Section 143(3) of the Act. Without forming a prima facie opinion, on the basis of such material, it was not possible for the AO to have simply concluded: "it is evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries". In the considered view of the Court, in light of the law explained with sufficient clarity by the Supreme Court in the decisions discussed hereinbefore, the basic requirement that the AO must apply his mind to the materials in order to have reasons to believe that the income of the Assessee escaped assessment is missing in the present case."

10. Now, adverting to the case at hand, in view of the law laid down by the Hon'ble Supreme Court in Chhugamal Rajpal vs. S.P. Chaliha (supra) and Hon'ble jurisdictional High Court in G & G Pharma Limited (supra) discussed in the preceding paras, we are of the considered view that initiation of the proceedings u/s 147 of the Act by the AO in this case on the basis of tax evasion petition are itself bad in

law as the AO has not satisfied himself before initiating the proceedings that income of the assessee has escaped assessment for the following reasons :-

- (i) that AO has merely proceeded to initiate proceedings u/s 147 of the Act on the basis of tax evasion petition that the assessee has provided loan of Rs.2,50,000/- and Rs.3,00,000/- to Mr. Deepak and Mr. Sanjay respectively;
- (ii) that the AO has merely forwarded the intimation contained in the tax evasion petition to the assessee without recording any reasons whatsoever;
- (iii) that the AO has not even come to prima facie conclusion that the alleged loan transaction between the assessee and Deepak and Sanjay were genuine transactions and as to what are the findings returned by the Id. Civil Court in the alleged suit filed by the assessee;
- (iv) that the AO has admittedly not recorded that he has reason to believe that the income of Rs.5,50,000/- has escaped assessment and he has satisfied himself before initiating the proceedings u/s 147 of the Act;
- (v) that when the AO without recording any reason for reopening forwarded the information received by way of tax evasion petition, according of approval by CIT for reopening is also a mechanical exercise without applying the mind and as such, approval accorded by the CIT is also not sustainable. Reliance in this regard is placed upon judgment in case of *Vijay Rameshbhai Gupta vs. ACIT - (2013) 32 taxman.com 41 (Guj.)*.
- (vi) that even after initiation of the proceedings u/s 147/148, the AO has failed to lay hand on the evidence if Sanjay has received a sum of Rs.2,50,000/- in cash as advance from Amita Arora, w/o Ashok Arora, rather resorted to the best judgment assessment u/s 144 of the Act;
- (vii) that neither the AO has applied his mind to satisfy himself to reopen the case nor he has investigated the matter during reassessment proceedings nor CIT had applied his mind before according approval for reopening.”

7. In the present case also, the A.O issued the notice u/s 148 of the Act on the basis of information received by way of tax evasion petition and did not apply his own mind. Therefore, respectfully, following the aforesaid referred to order, the issue is decided in favour of the assessee. As the legal issue is decided in favour of the assessee, the other issues raised on merit by the assessee as well as by the Department in their respective appeals become academic in nature.

8. In the result, the appeal of the assessee is allowed and that of the Department is dismissed.

(Order Pronounced in the Court on 4/11/2016)

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-

(N. K. SAINI)
ACCOUNTANT MEMBER

Dated: 4/11/2016

R.Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

		Date	<u>Initial</u>	
1.	Draft dictated on	03.11.2016		PS
2.	Draft placed before author	03.11.2016		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS	4.11.2016		PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk	4.11.2016		PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			

